IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3789 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESHCHANDRA @ RAMANBHAI L PATEL - Petitioner(s)

Versus

COMPT AUTHORITY - Respondent(s)

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Appearance :

MRS KETTY A MEHTA for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 02/09/2005

ORAL JUDGMENT

In this petition under Article 226/227 of the Constitution of India the petitioner has challenged the legality and validity of the judgment and order passed by the Urban Land Ceiling Tribunal dated 21st March 1988 in Appeal (Surat) No. 27/85 in

dismissing the same and confirming the order passed by the competent authority and Deputy Collector, Urban Land Ceiling Tribunal, Surat, dated 13th March 1985 in withdrawing the exemption/scheme under Section 21 of Urban Land Ceiling Tribunal Act {“the Act” for short }. The original landowner submitted the scheme under Section 21 of the Act with regard to the land bearing Survey No. 466/1, Final Plot No. 451 of Town Planning Scheme No.3 Surat admeasuring 5666 sq.mtrs., of land for constructing the dwelling units for weaker sections of the society. By order dated 2.6.1978 the scheme was sanctioned by the competent authority and ULC, Surat on certain conditions. It appears that according to the competent authority and ULC, Surat, there was a breach of Condition No.1,3, 4, 5, 8, 9, 14 and 15 and therefore show cause notice was issued by the competent authority and ULC, Surat, on 21.1.1985 calling upon the petitioner to show cause why the said scheme should not be cancelled and/or withdrawn. It appears that though served there was no representation from the petitioner and ultimately by order dated 13th March 1985 the competent authority and ULC, Surat passed the order cancelling the said scheme and withdrawn the exemption. Being aggrieved and dissatisfied with the order dated 13th March 1985 the competent authority and Deputy Collector, Surat, the petitioner preferred an appeal before the Urban Land Ceiling Tribunal (“the ULC Tribunal” for short) in Appeal (Surat) No. 27/85. It was contended on behalf of the petitioner that as the petitioner was sick he could not remain

present before the competent authority and ULC, Surat and even no reasons have been assigned by the competent authority while cancelling/withdrawing the scheme. Therefore it is requested to set aside the order passed by the competent authority and Deputy Collector, Surat, dated 13th March 1985 and requested to remand the matter to the competent authority and ULC for fresh decision after giving an opportunity to the petitioner. The ULC Tribunal, by its judgment and order dated 21st March 1988, dismissed the said appeal by holding that though notice was served the petitioners did not appear before the competent authority and ULC and even they have not produced any documentary evidence to support their contention that there is no breach of the conditions as alleged by the competent authority. Being aggrieved and dissatisfied with the judgment and order dated 21st March 1988 passed by the ULC Tribunal, Ahmedabad in Appeal (Surat) No. 27/85, the petitioners have preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

2. Mrs. K.A. Mehta, learned advocate appearing on behalf of the petitioners has made number of submissions on merits with regard to the conditions imposed by the authority while sanctioning the scheme under Section 21 of the Act and has tried to submit that the conditions which were imposed by the authority were not mandatory and that there is no breach of any of the conditions. She has also further

submitted that adequate opportunity was not given to the petitioner and that the show cause notice came to be issued on 18th January 1985/21st January 1985; there was only two notices issued in between; and as the petitioner was sick nobody could remain present on behalf of the petitioner the impugned order came to be passed immediately on 13th March 1985. She has also further submitted that even the impugned order passed by the competent authority and ULC, Surat dated 13th March 1985 is a non-speaking order and no reasons have been assigned with regard to alleged breach of any of the conditions committed by the petitioner. In view of the reason that this Court is of the opinion that the matter requires to be remanded to the competent authority and ULC, Surat, for deciding the case afresh as adequate opportunity was not given to the petitioner and as the order passed by the competent authority and ULC, Surat, is a non-speaking order and no reasons have been assigned therein, this Court is not considering the case of the petitioners on merits and is not dealing with the submissions made by Mrs. Mehta on the merits of the case.

3. Shri M.R. Mengdey, learned AGP appears on behalf of the respondent authorities and has tried to support the judgment and order passed by the ULC Tribunal in dismissing the Appeal and has submitted that as the authority has found that there is a breach of condition of the scheme under Section 21 of

the Act and no material was produced by the petitioner even before the ULC Tribunal to satisfy that there is no breach of the conditions of the scheme under Section 21 of the Act the ULC Tribunal is justified in dismissing the Appeal. It is therefore requested to dismiss the present Special Civil Application.

4. Heard the learned advocates appearing on behalf of the parties. It appears, that the show cause notice came to be issued on 18/21.1.1985. It is true, that nobody remained present on behalf of the petitioner. However, the cause shown by the petitioner is that as he was sick nobody could remain present on behalf of the petitioner and on the second adjourned date only the impugned order came to be passed by the competent authority, i.e., Deputy Collector, ULC, Surat, on 13th March 1985. Apart from that, even on going through the order passed by the competent authority and Deputy Collector, ULC, Surat dated 13th March 1985, it appears that the same is a non-speaking order and no reasons have been assigned while discussing about breach of condition of sanctioning of the scheme under Section 21 of the Act. Considering the aforesaid facts and circumstances of the case, the ULC Tribunal ought to have given one opportunity to the petitioner and ought to have remanded the matter to the competent authority and Deputy Collector, ULC, Surat, for deciding the same afresh after giving opportunity to

the petitioner. Under the circumstances, the present Special Civil Application is required to be allowed and the matter is required to be remanded to the competent authority and Deputy Collector, ULC, Surat for deciding the same afresh in accordance with law and on merits after giving opportunity to the petitioner. Mrs. Mehta, learned advocate appearing on behalf of the petitioner has assured this Court that her client will give fullest cooperation in deciding the case finally on remand and will not ask for any unnecessary adjournment. It is required to be noted that the contention on behalf of the respondent that possession is already taken over by them long back is disputed by the learned advocate appearing on behalf of the petitioner. This being a disputed question of fact this Court would not like to go into that. However, while remanding the matter to the competent authority the parties are required to be directed to maintain status-quo.

5. For the reasons stated above, the petition succeeds in part. The judgment and order passed by the Urban Land Ceiling Tribunal, Ahmedabad, dated 21st March 1988, in Appeal (Surat) No. 27/1985 as well as the order passed by the competent authority and Deputy Collector, ULC, Surat, dated 13th March 1985 cancelling the scheme under Section 21 of the Act, are hereby quashed and set aside. The matter is remanded to the competent authority and Deputy Collector, ULC, Surat and/or its successor to decide

and dispose of the case afresh in accordance with law and on merits after giving opportunity to the petitioner. The competent authority is directed to conclude the proceedings, on remand, within six months from the date of receipt of this order. Until then, the parties are directed to main status-quo. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R. Shah, J.]

RMR.